No. 17-949

IN THE

Supreme Court of the United States

JOHN STURGEON,

Petitioner,

v.

BERT FROST, IN HIS OFFICIAL CAPACITY AS ALASKA REGIONAL DIRECTOR OF THE NATIONAL PARK SERVICE, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF *AMICUS CURIAE* SAFARI CLUB INTERNATIONAL IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

Safari Club International ("Safari Club") is a nonprofit corporation incorporated in the State of Arizona, operating under § 501(c)(4) of the Internal Revenue Code, with principal offices and places of business in Washington, D.C. and Tucson, Arizona and a membership of approximately 50,000. Safari Club's missions are the conservation of wildlife, protection of the hunter, and education of the public concerning hunting and its use as a conservation tool. Safari Club carries out its conservation mission in part through its sister organization, Safari Club International Foundation.

Safari Club has long been involved in litigation and other advocacy efforts to promote hunting, access to hunting, and sustainable-use conservation, including hunting opportunities on federal and other lands in Alaska. For almost a decade, Safari Club pursued litigation to challenge the Federal Subsistence Board's administration of subsistence priorities for hunting and wildlife resources on federal lands in Alaska and the composition of the federal advisory councils that provided recommendations on the allocation of those priorities. *Safari Club Int'l et*

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1. The following is provided pursuant to Supreme Court Rule 37. No counsel for a party authored this brief in whole or in part, and no counsel for a party and no party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than named ***amicus curiae*** made a monetary contribution to this brief. Counsel of Record for Petitioner consented to the filing of ***amicus curiae*** briefs in support of either or of neither party. Counsel of Record for Respondents consented to the filing of this brief after receiving timely written notice from the ***amicus curiae***.

al. v. Demientieff et al. No. 98-0414 (D. Alaska, HRH). Currently, Safari Club, together with the State of Alaska and other non-governmental groups, is pursuing a case against Respondent, National Park Service ("NPS"), to challenge federal regulations that directly conflict with Alaska state regulations and prohibit forms of hunting on all National Preserves in Alaska. *State of Alaska v. Zinke et al.*, No. 3:17-cv-00014 (D. Alaska, SLG). In addition, Safari Club has participated or is currently participating in lawsuits involving, among other things, the listing and delisting of numerous species under the Endangered Species Act, states' authority and ability to manage wildlife populations via hunting, the ability of hunters to retrieve legally hunted animals from lands within National Forests, and the ability of hunters to import sport-hunted trophies into the U.S. from international hunts.

In this amicus brief, Safari Club will "bring[] to the attention of the Court relevant matter not already brought to its attention by the parties." Sup. Ct. R. 37(1). This brief provides information that will "be of considerable help to the Court." *Id.* It includes the view of both resident and nonresident hunters who enjoy Alaska's world-class hunting resources and opportunities and who require transportation on the waters that exist within the boundaries of Conservation System Units ("CSUs") administered by the Respondent NPS.[2] Access to hunting

2. CSUs in Alaska include "any unit in Alaska of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers Systems, National Trails System, National Wilderness Preservation System, or a National Forest Monument including existing units, units established, designated, or expanded by or under the provisions of [the Alaska National Interest Lands Conservation Act of 1980], additions to such units, and any such

areas and opportunities is of primary concern to Safari Club, its members, and many other hunters throughout the United States and the world. In Alaska, hunters often face significant obstacles to access hunting areas due to limited road coverage and the isolated nature of many valued hunting locations. Access to those opportunities depends upon hunters' ability to use all means of travel on rivers and other navigable waters in CSUs in Alaska. Safari Club and its members, along with the hunting community generally, seek to protect the full range of hunting and sustainable-use conservation opportunities available in Alaska.

SUMMARY OF THE ARGUMENT

Safari Club agrees with the arguments presented in Petitioner John Sturgeon's brief. The federal government does not hold title to the waterways at issue here. In the absence of title to the waterways that run within the CSUs, the NPS lacks the authority to regulate the use of those waterways. That authority lies with the State of Alaska.

Safari Club also agrees with Sturgeon that the reserved water rights doctrine provides no justification for the NPS's claim of regulatory authority in this case. Non-consumptive water uses, such as travel via hovercraft and other modes of transportation used by hunters that may be affected by the outcome of this case, do not have

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unit established, designated, or expanded hereafter." 16 U.S.C. § 3102(4); *see also* Petitioner Br. at 5–6. For the purposes of this brief, all references to CSUs include only those CSU lands administered by the NPS.

any demonstrable impact on the volume of water available to achieve the primary purposes for which the Yukon-Charley Rivers National Preserve was reserved. The "sight and sound" reasoning provided by the NPS when it adopted the restriction was not intended to sustain a certain volume of water within the Preserve, necessary to protect the Preserve's purposes. Further, because the NPS applies the hovercraft ban across the entire NPS System, a court cannot find that the ban applies to fulfill a purpose specific to the Yukon-Charley Rivers National Preserve, as is required for application of the reserved water rights doctrine.

The Ninth Circuit's ruling greatly expands the scope of the reserved water rights doctrine compared to this Court's previous holdings. Unless this Court overturns the decision below, the United States will have practically limitless authority over an innumerable number of waters in this country.

Had Congress wished to incorporate the waters within the CSUs, as it has done in many instances for other NPS units, it could have done so. The failure of Congress to expressly reserve the waters within the CSUs and place them within NPS authority demonstrates that the position of the Respondents and the ruling of the Ninth Circuit do not reflect Congressional intent.

The Court's ruling in this case will likely have an impact on whether hunters, guides, and outfitters, many of whom are Safari Club members, will be able to access congressionally-mandated recreational activities available within and outside the boundaries of federal lands in Alaska and other states.

The ability to access hunting areas is essential to the hunter. In Alaska, hunting opportunities are often found in isolated, difficult to reach places, to which there is no road access. A viable, and often the most viable, means of access to hunting locations is air travel by float plane. The NPS's decision, upheld by the Ninth Circuit, that the NPS has the authority to regulate activity on waters that exist within CSU boundaries, poses a severe threat to all who wish to hunt in these inaccessible locations. The NPS's interpretation of Section 103(c) triggers the application of 36 C.F.R. § 2.17(a) and its prohibition against the use of not only hovercraft but also aircraft on waters within Alaska's CSUs. The regulatory ban against float planes landing on the majority of those waters will make it impossible for both resident and non-resident hunters and their guides to reach many hunting locations within and around CSUs, including many National Preserves. Even though Congress mandated the authorization of hunting in Alaska's National Preserves, the NPS has thwarted Congress's directive by applying regulations in a way that undermines hunters' abilities to access and use National Preserves for hunting.

ARGUMENT

A. The Reserved Water Rights Doctrine is Inapposite to Sturgeon's Challenge to the Hovercraft Ban.

Although it is a critical aspect to the outcome of Mr. Sturgeon's controversy, determining whether the Nation River and other navigable waters in Alaska's CSUs are "public lands" is not necessary for this Court to dispatch with the Ninth Circuit's ill-reasoned use of the reserved water rights doctrine in this case. Sturgeon correctly

argues that "the hovercraft ban exceeds the scope of whatever reserved rights the United States might hold" in the Nation River. Petitioner Br. at 37. Sturgeon accurately describes the framework of the reserved water rights doctrine:

> The doctrine is premised on the federal government's need for ***actual use and withdrawal of a certain volume of water***; it applies where Congress sets aside land for a federal purpose but that purpose would be "entirely defeated" without the reserved water. *United States v. New Mexico*, 438 U.S. 696, 700 (1978).

Id. (emphasis added). The doctrine provides no support for justifying a hovercraft ban on any water, let alone the Nation River or other Alaskan CSU waters. As a use of water that neither consumes nor harms the water, travel via hovercraft is not a type of use that can be prohibited in favor of any reserved water rights.

The previous cases to which this Court has applied the reserved water rights doctrine have involved appropriation of water such that the appropriated water is removed from the water system and not usable by anyone else. In these cases, the United States claimed a right to water at issue that would otherwise be withdrawn or diverted from the water system. *See e.g.*, *Nevada v. United States*, 463 U.S. 110, 117 (1983) (water at issue sourced from river used to irrigate Indian reservation and federal reclamation project); *New Mexico* 438 U.S. at 697, n.1 (1978) (controversy began as action to "enjoin alleged illegal diversions from the Rio Mimbres" for irrigation);

Cappaert v. United States, 426 U.S. 128, 133 (1976) (rancher was pumping groundwater from underground aquifer connected to Devil's Hole); *Winters v. United States*, 207 U.S. 564, 566 (1908) (water withdrawn from Milk River for irrigation).

Had Mr. Sturgeon been conducting some activity that removed or diverted significant volumes of water from the Nation River, to the detriment of the primary purposes of the Yukon-Charley Rivers National Preserve, then the NPS might have had an arguable basis for asserting a reserved water right to prevent such an appropriation of water. But, those facts do not exist in this case. John Sturgeon was traveling on the Nation River via his personal hovercraft, which hovers above the water on a cushion of air. "'Hovercraft' is defined as a device that is supported by a fan-generated air cushion." General Regulations for Areas Administered by the National Park Service, 48 Fed. Reg. 30252, 30258 (June 30, 1983). *See also*, Alaska Admin. Code tit. 11, § 20.990(7). Sturgeon's use of his hovercraft does not remove, appropriate or divert a demonstrable amount of water from the Nation River, and any other user can likewise use the water after Mr. Sturgeon hovers over it. The reserved water rights doctrine cannot be used to prohibit such non-consumptive activity

The NPS's own explanation for its reason to include a hovercraft prohibition in the regulations applicable to all NPS units proves that the prohibitions were not intended by the NPS to preserve a certain volume of water within any body of water. Although the restriction was not part of the proposed version of the regulations published in 1982 (47 Fed. Reg. 11598 (Mar. 17, 1982)), the NPS decided

to add a hovercraft prohibition to the final version to address alleged complaints about the "sight and sound" of the vehicles:

> A few commenters recommended that the Service prohibit the use of hovercraft in park areas. The National Park Service has adopted this suggestion. "Hovercraft" is defined as a device that is supported by a fan-generated air cushion. The Service has determined that hovercraft should be prohibited because they provide virtually unlimited access to park areas and introduce a mechanical mode of transportation into locations where the intrusion of motorized equipment by sight or sound is generally inappropriate. This is consistent with the Service's intent to control portable engines and motors under § 2.12. Hovercraft shall only be permitted pursuant to special regulations and only following a thorough analysis of their effect on park resources.

48 Fed. Reg. at 30258. As the NPS's decision to include a hovercraft restriction had nothing to do with any water-volume concern for fish or other park natural resources, or to any of the primary purposes of the Preserve, the reserved water rights doctrine cannot be implied or justify the restriction.

Additionally, the simple fact that the NPS's hovercraft ban applies to *all* NPS administered lands is determinative that the reserved water rights doctrine provides no authority for the ban. "Each time this Court has applied the 'implied-reservation-of-water doctrine,' it has carefully

examined both the asserted water right and the ***specific purposes for which the land was reserved*** . . . ." *New Mexico*, 438 U.S. at 700 (emphasis added). It is impossible for a court, after a careful and specific examination, to find a rationale for the application of a regulation to a specific unit when the regulation applies system-wide. Such an approach defies the specificity required for the application of the reserved water rights doctrine. The NPS's adoption of the system-wide hovercraft ban cannot satisfy a court's careful examination of any specific purpose for which any land was reserved, let alone a careful examination of the purposes for which the Yukon-Charley Rivers National Preserve was reserved. Notably, the Ninth Circuit did not conduct the required careful examination; doing so would have revealed that the hovercraft ban was not directed to fulfill a specific purpose of the Yukon-Charley Rivers National Preserve and consequently did not qualify for application of the reserved water rights doctrine.

B. The Ninth Circuit's Ruling Goes Well Beyond the Scope of Established Caselaw Regarding the Reserved Water Rights Doctrine.

If the Ninth Circuit's ruling is upheld, the reserved water rights doctrine's scope will be expanded far beyond this Court's previous holdings. The *amici* States appropriately described the Ninth Circuit's ruling as "particularly alarming" because it implies "that the United States' reserved water right extends to *all water on all navigable waters within the reservation*." States' Br. at 14, n.5 (emphasis in original). In fact, by the Ninth Circuit's logic, the United States could likely claim a reserved water right for *any water*, inside or outside the reservation, navigable or non-navigable, so long as the water is hydrologically connected to the reservation.

This Court has held that the United States can hold an implied reserved water right in non-navigable, off-reservation water. *Cappaert*, 426 U.S. at 142–43 (NPS can restrict pumping of ground water underneath privately held land). The Ninth Circuit's extension of the doctrine gives the United States authority over "all the bodies of water on which the United States' reserved rights *could at some point* be enforced—*i.e.*, those waters that are or *may become necessary* to fulfill the primary purposes of the federal reservation at issue." *Sturgeon v. Frost*, 872 F.3d 927, 936 (9th Cir. 2017) (emphasis original; citation omitted). Combined with this Court's precedent that includes private and ground waters within the ambit of the doctrine, the scope of the Ninth Circuit's expanded interpretation is virtually limitless. Because the Ninth Circuit seemingly requires no proof that the United States actually needs the water to achieve the alleged purpose of the reservation, the real-world implications of the Ninth Circuit's holding push the doctrine beyond the constraints that this Court has consistently applied. Any water hydrologically connected to a federal reservation could be comprehensively regulated with little more than the United States' assertation that it may, at some point in the nonspecific future, be necessary to fulfill a purpose of a federal reservation.

C. Had Congress Intended to Empower the NPS to Regulate Activity on Waterways Within National Preserves, It Could Have Done So.

As explained in Petitioner John Sturgeon's brief, Congress is well aware of how to include in legislation an express statement of its wishes to bring waters or submerged lands within the scope of NPS jurisdiction.

See Petitioner Br. at 32 (providing example of the statute establishing Olympic National Park in which Congress explicitly identified that the Park would include "all submerged lands and waters of Lake Ozette, Washington and the Ozette River, Washington."). The establishing language of several other NPS-administered lands similarly demonstrates that whenever Congress wants to give the NPS authority over submerged lands or waters in or near a National Park unit, it has done so expressly. *See, e.g.*, 16 U.S.C. § 398c (Virgin Islands National Park); 16 U.S.C. § 460cc (Gateway National Recreation Area); 16 U.S.C. § 410ff (Channel Islands National Park); and 16 U.S.C. § 459c-1 (Point Reyes National Seashore). Congress could have included a similar express authorization for waters or submerged lands within the National Preserves at issue in this litigation in order to place them under the regulatory authority of the NPS, but it did not.

D. The NPS's Exercise of Authority Over Waters Within CSU Boundaries Deprives Hunters of Access to Hunting Opportunities.

Petitioner John Sturgeon filed suit in federal district court in Alaska to challenge the NPS's exercise of authority to prohibit Sturgeon from operating his hovercraft on navigable waters flowing within the boundaries of the Yukon-Charley Rivers National Preserve. Sturgeon, a hunter, used his hovercraft to travel to favored moose hunting locations in Alaska. The authority that Sturgeon challenges impacts far more than his ability to visit a moose hunting area or even the ability of hunters generally to use hovercrafts within the boundaries of CSUs in Alaska. This authority threatens the ability of hunters and guides generally throughout Alaska to access

hunting opportunities located both inside and outside the boundaries of CSUs managed by the NPS. Unless this Court rejects the Ninth Circuit's interpretation of the NPS's authority to regulate activity on waters within CSU boundaries, hunters will be deprived of essential means of transportation to the remote hunting opportunities in and near many of the lands administered by the NPS in Alaska.

Float planes, because they can land on water, provide an essential means of transportation for hunters in Alaska. The use of float planes in CSUs is at risk because the Ninth Circuit upheld the NPS's asserted authority, to regulate activities on

> navigable waters and areas within their ordinary reach (up to the mean high water line in places subject to the ebb and flow of the tide and up to the ordinary high water mark in other places) and without regard to the ownership of submerged lands, tidelands, or lowlands

36 C.F.R. § 1.2(a)(3). Not only would that authority enable the NPS to prohibit the use of hovercrafts on such waters within the boundaries of CSUs administered by the NPS, but pursuant to 36 C.F.R. § 2.17(a), it would also result in the prohibition against the use of most types of aircraft on those waters:

> (a) The following are prohibited:
>
> (1) Operating or using aircraft on lands or waters other than at locations designated pursuant to special regulations.

Id. § 2.17(a).[3]

A prohibition on aircraft use of waters within CSU boundaries has a major impact on hunter access to hunting opportunities in Alaska. The NPS administers approximately 43,522,000 acres of CSU lands in the State. 16 U.S.C. §§ 410hh, 410hh-1. Almost half of those lands were established under ANILCA as National Preserves, including the Anakchak (~ 367,000 acres), Bering Land Bridge (~ 2,457,000 acres), Denali (~ 1,330,000 acres), Gates of the Arctic (~ 900,000 acres), Glacier Bay (~ 57,000 acres), Katmai (~ 308,000 acres), Lake Clark (~ 1,214,000 acres), Noatak (~ 6,460,000 acres), Wrangell-St. Elias (~ 4,117,000 acres), and Yukon-Charley Rivers National Preserves (~ 1,713,000 acres) (totaling ~ 18,923,000 acres). *Id.* National Preserves are a major component of the lands in Alaska open to hunting.

Alaska's National Preserves, like many lands in the State, are actively hunted. Congress specifically mandated that the NPS authorize hunting on National Preserves in Alaska.

> A National Preserve in Alaska shall be administered and managed as a unit of the

3. ANILCA expressly grants the NPS authority to limit aircraft landings on only two portions of the waterways within the CSUs. For Kobuk Valley National Park, Congress directed "[e]xcept at such times when, and locations where, to do so would be inconsistent with the purposes of the park, the Secretary shall permit aircraft to continue to land at sites in the upper Salmon River watershed." 16 U.S.C. § 410hh(6). ANILCA grants similar authority to the NPS for limiting aircraft landings in the Upper Charley River watershed. *Id.* at § 410hh(10).

> National Park System in the same manner as a national park except as otherwise provided in this Act and except that the taking of fish and wildlife for sport purposes and subsistence uses, and trapping ***shall be allowed in a national preserve*** under applicable State and Federal law and regulation.

16 U.S.C. § 3201 (emphasis added); *see also* 36 C.F.R. § 1340(d).

Although Alaska's National Preserves are open to hunting, access to that hunting can be difficult. Few roads run through or access all areas of those Preserves. As acknowledged by the National Park Service itself, several of the National Preserves cannot be reached by road at all. "While some of Alaska's national parklands are accessible by road, many can only be reached by boat, plane, or non-motorized transportation." NATIONAL PARK SERVICE, ALASKA, VISIT, https://www.nps.gov/locations/alaska/visit.htm (last visited Aug. 11, 2018). For example, boats and aircraft provide the only access to Katmai National Park and Preserve. "Hunting and trapping within Katmai National Preserve requires extensive planning. Access in most cases will involve air taxi service via float plane from King Salmon or one of the other surrounding villages." NATIONAL PARK SERVICE, KATMAI, SPORT HUNTING, https://www.nps.gov/katm/planyourvisit/hunting.htm (last visited Aug. 11, 2018). Similarly, no roads lead into Gates of the Arctic National Park. "Most visitors access the park by air taxi, in small aircraft equipped with floats or tundra tires." NATIONAL PARK SERVICE, GATES OF THE ARCTIC, DIRECTIONS, https://www.nps.gov/gaar/planyourvisit/directions.htm (last visited Aug. 11, 2018).

Hunters need to be able to land float planes on the waters running through National Preserves to reach the bear, moose, caribou, sheep, goat and other species that Congress directed the NPS to make available for hunting. The NPS's regulation, 36 C.F.R. § 2.17, if broadly extended to all non-federal waters running through National Preserves by 36 C.F.R. § 1.2, could largely prohibit the use of aircraft on those waters. With diminished ability to reach those hunting opportunities by float plane, hunters will lose the access they require to participate in hunting on National Preserves that Congress mandated.

The world-class hunting opportunities in Alaska are not only important to Alaska residents, but to the residents of all the states (and other countries). Nonresidents flock to Alaska to experience some of the best hunting in the world.[4] As the Alaska Department of Fish and Game ("Department") explains:

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4. While *amicus curiae* Safari Club is a hunting/conservation organization, many of its members also enjoy or make their livelihoods from fishing. Like hunting, fishing is extremely popular in Alaska. The estimated number of anglers in Alaska in 2016 was 464,624 and the number of angler-days fished in Alaska in 2016 was 1,982,300. ALASKA DEPARTMENT OF FISH AND GAME, ALASKA SPORT FISHING SURVEY, STATEWIDE, http://www.adfg.alaska.gov/sf/sportfishingsurvey/index.cfm?ADFG=region.home (last visited Aug. 12, 2018). As the Department states, "Alaska is a world-renowned sport fishing destination. In fact, in this land of 3,000 rivers, 3 million lakes and 6,640 miles of coastline, a sport angler's greatest challenge can just be deciding where to go." ALASKA DEPARTMENT OF FISH AND GAME, SPORT FISHERIES, http://www.adfg.alaska.gov/index.cfm?adfg=fishingSport.main (last visited Aug. 12, 2018).

> Alaska's hunting reputation is justly deserved. One-fifth the size of the entire United States, Alaska offers wilderness hunting opportunities found in few other locations in the world. It is true that huge moose occur here and that vast caribou herds dominate the landscape in some areas and seasons. Numerous mountain ranges support populations of Dall sheep and mountain goats, and Sitka black-tailed deer thrive in the coastal forests. Once extirpated from the state, muskox now range over the western and arctic coastal wilderness. Large numbers of black and brown bear also exist here. And wolves, which are found across most of the state, are also abundant in some areas.

ALASKA DEPARTMENT OF FISH AND GAME, INTRODUCTION TO ALASKA BIG GAME HUNTING, http://www.adfg.alaska.gov/index.cfm?adfg=hunting.biggameintro (last visited Aug. 12, 2018). Because of its climate and terrain, Alaska offers some of the most challenging hunting in the United States. *Id.* The Department describes some of the animals that Alaska residents and nonresidents hunt:

- "Hunting is used to manage the size of these herds, and bison hunts are among the most popular drawing hunts in Alaska. For example, with the Delta bison hunt, each year roughly 15,000 hunters apply for about 100 permits, and on average about 74 animals are harvested there. Statewide, the harvest of plains bison averages 92 animals/year." ALASKA DEPARTMENT OF FISH AND GAME, BISON HUNTING IN ALASKA, http://www.adfg.alaska.gov/index.cfm?adfg=bisonhunting.main (last visited Aug. 11, 2018).

- "Alaska has an estimated 30,000 brown bears statewide. In 2007, about 1,900 brown bears were harvested in Alaska. Of that figure, about 700 were taken by Alaska residents and roughly 1,200 (or 67 percent) were taken by nonresidents." ALASKA DEPARTMENT OF FISH AND GAME, BROWN/GRIZZLY BEAR HUNTING IN ALASKA, http://www.adfg.alaska.gov/index.cfm?adfg=brownbearhunting.main (last visited Aug. 11, 2018).

- "On average, people harvest about 22,000 caribou in Alaska each year." ALASKA DEPARTMENT OF FISH AND GAME, CARIBOU HUNTING IN ALASKA, http://www.adfg.alaska.gov/index.cfm?adfg=caribouhunting.main (last visited Aug. 11, 2018).

- "Alaska's Dall sheep are popular with nonresident hunters, and the harvest is split fairly evenly between residents and nonresidents. In 2007, for example, nonresidents took 403 sheep, while resident hunters took 513, or about 57 percent." ALASKA DEPARTMENT OF FISH AND GAME, DALL SHEEP HUNTING IN ALASKA, http://www.adfg.alaska.gov/index.cfm?adfg=sheephunting.main (last visited Aug. 11, 2018).

- "In Southeast Alaska, the Sitka black-tailed deer is the most frequently pursued species of big game. Between 1987 and 2007, an average annual harvest of about 12,330 deer has occurred in Alaska." ALASKA DEPARTMENT OF FISH AND GAME, SITKA BLACK-TAILED DEER HUNTING IN ALASKA, http://www.adfg.alaska.gov/index.cfm?adfg=deerhunting.main (last visited Aug. 11, 2018).

- "Alaskans and nonresidents annually harvest 6,000 to 8,000 moose, which translates into about 3.5 million pounds of usable meat." ALASKA DEPARTMENT OF FISH AND GAME, MOOSE HUNTING IN ALASKA, http://www.adfg.alaska.gov/index.cfm?adfg=moosehunting.main (last visited Aug. 11, 2018).

- "In 2007, 518 mountain goats were harvested in Alaska, 158 by nonresidents (about 30 percent) and 360 by resident hunters." ALASKA DEPARTMENT OF FISH AND GAME, GOAT HUNTING IN ALASKA, http://www.adfg.alaska.gov/index.cfm?adfg=goathunting.main (last visited Aug. 11, 2018).

- "Migratory bird hunters in Alaska have numerous opportunities to harvest waterfowl, sandhill cranes, and snipe. Whether decoying brant over eel grass beds at Cold Bay, jump-shooting dabblers on Minto Flats, or waiting in a pit blind for a crack at speckle bellies in Delta, the variety of bird species hunted and the diversity of hunting venues are unique to the state. Alaska's marine and freshwater wetlands produce a fall flight of about 12 million ducks and over one million geese to all four North American flyways and neighboring countries. They also provide vital staging habitat for migrants that breed in Canada and Russia. Approximately 8,800 waterfowl hunters in Alaska can expect to harvest close to 70,000 ducks and 7,000 geese per hunting season." ALASKA DEPARTMENT OF FISH AND GAME, WATERFOWL HUNTING IN ALASKA, http://www.adfg.alaska.gov/index.cfm?adfg=waterfowlhunting.main (last visited Aug. 11, 2018).

- "Wolves are classified as big game (in the hunting regulations) and as furbearers (in the trapping regulations). Wolves may be harvested with a hunting license and/or a trapping license." ALASKA DEPARTMENT OF FISH AND GAME, WOLF HUNTING IN ALASKA, http://www.adfg.alaska.gov/index.cfm?adfg=wolfhunting.opportunities (last visited Aug. 11, 2018).

- "The harvest of muskox in Alaska has increased steadily in recent years. For example, 98 animals were harvested in 2003, and 258 were harvested in 2007." ALASKA DEPARTMENT OF FISH AND GAME, MUSKOX HUNTING IN ALASKA, http://www.adfg.alaska.gov/index.cfm?adfg=muskoxhunting.main (last visited Aug. 11, 2018).

- "Small game hunting provides a wonderful opportunity to introduce young and new hunters to the heritage of hunting. It offers an easy, cost effective, and accessible opportunity to begin a friendship, tradition, and outdoor activity that can last a lifetime. Small game hunting tends to be much more casual than big game hunting, does not require special permits, tags, or stamps, and a group can enjoy a midday hunt and be home for dinner. A child introduced to hunting through flushing hares out of a local willow draw or walking a gravel road for spruce grouse will become hooked on the tradition and friendship that going outdoors with friends and family provides." ALASKA DEPARTMENT OF FISH AND GAME, SMALL GAME HUNTING IN ALASKA, http://www.adfg.alaska.gov/index.cfm?adfg=smallgamehunting.main (last visited Aug. 11, 2018).

In addition to being extremely popular, hunting supports Alaska's economy and provides a living to many guides and outfitters, who mainly cater to nonresidents. Hunting also benefits others who provide services to the out-of-state visitors. As described in one report:

> In 2012, guides contracted with 3,207 hunters, 3,055 of them nonresidents. In total, hunters spent $51 million on guided hunts. Of the total, nonresident hunters spent an estimated $48 million. In addition to hunting packages, non-resident hunters and their companions spent another $3.5 million on lodging, food and beverage, clothing, souvenirs, and outdoor equipment, among other purchases while in Alaska. Dollars spent in Alaska by non-residents provides new dollars that help support the state's economy.
>
> Including $29.5 million in direct and indirect (multiplier effects) associated with this spending, guided hunting in Alaska accounted for $78 million in total economic activity in 2012. [Page 1]

The McDowell Group, *The Economic Impacts of Guided Hunting in Alaska*, (February 2014), http://www.alaskaprohunter.org/Economic_Impacts_of_Guided_Hunting_Final.pdf (last visited Aug. 12, 2018). The report also noted that a significant percentage of the guided hunting occurs on federal lands, including NPS lands:

> Contracting guides reported that ... [a]lmost half of revenue was earned hunting on federal

> lands, including US Fish and Wildlife Service (22 percent), US Forest Service (11 percent), ***NPS (9 percent)***, and BLM (4 percent). Eight percent was derived from private land (including Alaska Native Corporation land)." [Page 9, emphasis added]

Id. (emphasis added). As examples of some of the opportunities available in NPS lands in Alaska, several outfitters offer guided hunts for desirable big game species on National Preserve lands. On the websites for some of the National Preserves, the NPS itself directs visitors to outfitters providing these services. For example, the website for Denali National Park and Preserve refers visitors to many different businesses that provide services within the Park and Preserve, including two listed as "Sport Hunting Guides/Outfitters." NATIONAL PARK SERVICE, DENALI, GUIDED ACTIVITIES IN DENALI, https://www.nps.gov/dena/planyourvisit/business-with-park.htm (last visited Aug. 12, 2018). Another website lists ten different companies that provide hunting guide and outfitter services for Wrangell-St. Elias National Park and Preserve. NATIONAL PARK SERVICE, ALASKA, DIRECTORY OF COMMERCIAL SERVICE PROVIDERS, https://www.nps.gov/locations/alaska/services-wrangell-st-elias.htm (last visited Aug. 12, 2018). The outcome of this case will affect innumerable world-class hunting and fishing opportunities and directly impact companies and individuals that rely on those opportunities.

CONCLUSION

Safari Club asks this Court to reverse the Ninth Circuit's ruling, invalidate the illegal restrictions that the NPS has imposed on activities on waterways within

National Preserves in Alaska and resolve all issues related to John Sturgeon's challenge. Safari Club seeks a ruling from this Court that will prevent the NPS from having the ability to exercise authority over the use of these waterways in ways that will make it more difficult, if not impossible, for hunters to travel to valued hunting sites and enjoy Alaska's wildlife resources. Safari Club asks this court to resolve this matter, not only to clarify that John Sturgeon has the right to access his favored moose hunting areas in the Yukon-Charley Rivers National Preserve, but to establish that activities on the waterways that run through National Preserves in Alaska are under the authority of the State of Alaska, not the National Park Service. This Court's reversal of the Ninth Circuit's ruling and invalidation of the NPS's illegal interpretation of its regulatory authority will make certain that all hunters and anglers will continue to be able to access valuable hunting and fishing activities via the waters that run within the CSUs in Alaska.

Respectfully submitted,

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